

**RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**COURT NO 2****O.A. No. 66 of 2011****Thursday, this the 12th of Feb 2015****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member  
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

Ex-Col Kameshwar Chaudhary (IC-36971W)  
 Last posted at Headquarters Central Command, Lucknow  
 Aged about 57 years, son of Late R.P. Chaudhary, presently  
 residing at House No 5/305, Viram Khand, Gomtinagar,  
 District – Lucknow (UP)

- Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence, South Block, New Delhi-110011
3. General Officer Commanding-in-Chief, Central Command, Lucknow Cantt.
4. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (UP).

....Respondents

**Ld. Counsel appeared for the applicant - Shri P. N. Chaturvedi,  
Advocate**

**Ld. Counsel appeared for the respondents - Shri Mukund Tewari,  
Senior Central Government  
Counsel**

**ORDER****“Lt Gen Gyan Bhushan, Administrative Member”**

1. This Original Application No 66 of 2011 has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, claiming for the following reliefs:

*(i) Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal orders issued on First Appeal and Second Appeal [Annexure Nos. A-1 (i) and A-1 (ii)]*

*(ii) Issue/pass an order or direction of appropriate nature to the respondents to grant the disability pension to the applicant to the extent of 40% as decided by the Medical Board with effect from 31-12-2006.*

*(iii) Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

*(iv) Allow this application with costs.*

2. In brief, the facts of the case are that the applicant was granted Short Service Commission in the Army on 19 Mar 1977 and Permanent Commission on 19 Mar 1982. He retired from service on 31 Dec 2006 and prior to his retirement, he was brought before Release Medical Board at Military Hospital Danapur in August 2006. He was considered in low Medical Category S1H1A1P2E1 and his disability was assessed as Gout 10%, Primary Hypertension 30%, Non-Insulin Dependent Diabetes Mellitus (NIDDM) 20% for life and composite disability as 40% for life. However, it was considered as neither

attributable to nor aggravated by service. Claim of disability pension of the applicant was rejected since the disability was assessed as neither attributable to nor aggravated by service. First and Second appeals for grant of disability pension were also rejected. Being aggrieved, the applicant filed this Original application.

3. Heard Shri **P.N. Chaturvedi**, Ld. Counsel for the applicant and Shri **Mukund Tewari**, Ld. Senior Central Government Counsel at length and perused the relevant documents available on record.

4. Ld. Counsel for the applicant submitted that the applicant was granted Short Service commission in the Army on 19 Mar 1977 and permanent commission on 19 Mar 1982. He retired from the service on 31.12.2006 after completing 29 years of meritorious service. During his tenure in the Army the applicant had served in most inhospitable terrain under trying conditions. He was in medical category SHAPE1 till 1988. While serving with Peace Keeping Force in 'OP PAWAN' in Sri Lanka in 1988, he had operated under the most unhygienic and strenuous conditions continuously as such he developed severe pain and swelling in his toe, ankles and knees. He was evacuated by air to Military Hospital Madras on 05 Oct 1988 for treatment and after providing necessary treatment and medical management he was given sick leave and thereafter he was put in various low medical categories from time to time. He suffered from Gout, Primary Hypertension and NIDDM and his medical category had been reviewed at many stages and it had

affected the applicant's career progression. The details of medical status have been:-

- (i) 20% disability for Gout on 30 Aug 1996.
- (ii) 20% disability for Gout again on 28 Aug 1998.
- (iii) 30% disabilities for Hypertension on 02 May 2001.
- (iv) 15-19% disabilities for Gout on 30 May 2002.
- (v) 30% disabilities for Hypertension on 02 May 2003.
- (vi) 30% disabilities for Hypertension on 23 April 2005.

5. Ld. Counsel for the applicant submitted that prior to his retirement, Release Medical Board was held at MH Danapur in Aug 2006 which placed the applicant in low medical category S1H1A1P2E1 for 'Gout, Primary Hypertension and Niddm' and assessed the disability @ Gout 10%, Primary Hypertension 30% and Niddm 20% with composite assessment for all disabilities @ 40% for life but it was considered neither attributable to nor aggravated by service. Claim of disability pension of the applicant was rejected since the disability was assessed as neither attributable to nor aggravated and not connected with service. First appeal of the applicant was rejected stating that out of three disabilities, 'Gout' was considered as aggravated by military service and this had been assessed below 20% by the Release Medical Board. Other two disabilities i.e. Primary Hypertension and NIDDM have been considered as neither attributable to nor aggravated by military service as such the applicant is not entitled to disability pension. Second appeal of the applicant was also rejected

stating that onset of 'Gout' was during Operation PAWAN in 1988 and hence it is aggravated by service, however, disability for this was assessed at below 20%. Whereas the other two disabilities, Primary Hypertension and NIDDM were in peace; hence these were considered as neither attributable to nor aggravated by service, as such the applicant was not entitled to disability pension.

6. Ld. Counsel for the applicant submitted that it is very unfortunate that despite knowing the past record of his service in difficult areas and also knowing the past medical history of the applicant, the Release Medical Board had considered the disabilities as neither attributable to nor aggravated by service and also not connected with service. As per the provisions, the Medical Board is duty bound to give detail reasons for their assessment, which have not been given. It indicates that the medical authorities had not conducted thorough examination of the events and the reasons which had led to the disabilities of the applicant. He submitted that on one side the disability percentage has been provided to the applicant for life and in the same vein he has been deprived of the entitled disability pension due to illegal and capricious decision of the Release Medical Board.

7. Ld. Counsel for the applicant submitted that the entire matter with regard to the disability pension be examined on touchstone of logic and rationality. The applicant is entitled to the pensionary benefits as a matter of right for the disabilities

which he had sustained during the service and the disabilities mentioned in the Release Medical Board are attributable to and aggravated by service. The applicant should be granted disability pension @ 40% for life as per assessment of Release Medical Board.

8. In support of his contention, learned counsel for the applicant relied upon the law laid down by Hon'ble the Apex Court, in the case of Dharamvir Singh Vs Union of India & others reported in (2013) 7 Supreme Court Cases Page 316 in which it was held that if an individual is invalided out of service on account of disability and the medical documents do not contain the fact that the disability could have existed prior to his entry into the service but could not have been detected due to the reasons mentioned therein, the disability is liable to be considered as attributable to service. In the case of the applicant no such disease existed prior to his entry into military service and hence the disability is to be treated as attributable to, and aggravated by military service. He also cited the Judgement of Sukhvinder Singh Vs. Union of India and Ors reported in 2014 STPL(Web) 468 SC. He submitted that the applicant, therefore, be granted disability pension @ 40% for life from the date of his Release Medical Board.

9. On the other hand, Ld. Counsel for the respondents submitted that the applicant was granted Short Service Commission in the Army on 19 Mar 1977 and Permanent Commission on 19 Mar 1982. He retired from service on

31 Dec 2006. Prior to retirement, in Aug 2006, he was brought before the duly constituted Release Medical Board at Military Hospital Danapur, which found the applicant suffering from 'Gout, Primary Hypertension and NIDDM'. The disabilities were considered as neither attributable to nor aggravated by service with degree of disablement assessed @ 10% for Gout, 30% for Primary Hypertension and 20% for NIDDM for life and composite assessment @ 40% for life. However, initial claim of disability pension of the applicant was rejected by the competent authority being neither attributable to nor aggravated by service. The first appeal of the applicant was rejected stating that out of three disabilities, 'Gout' should be considered as aggravated by service and this had been appropriately held as less than 20% as such he was not authorized disability pension. The rest of the disabilities were considered as neither attributable to nor aggravated by service. Second appeal of the applicant was also rejected stating that onset of 'Gout' was during Operation PAWAN in 1988 and hence it is aggravated by service but disability for this was assessed at below 20%. The other two disabilities, Primary Hypertension and NIDDM were in peace; hence these were assessed as neither attributable to nor aggravated by service, as such the applicant was not entitled to disability pension.

10. Ld. Counsel for the respondents further submitted that as per provisions of Rule 173 of Pension Regulation for the Army 1961 (Part I), the disability pension is payable to an individual whose disability is assessed either attributable to or aggravated

by military service and is assessed at 20% or more by the medical authority. Since the disability of the applicant was regarded neither attributable to, nor aggravated by military service by Release Medical Board, he was not granted disability pension. The same point of view was taken by the PCDA (Pension) Allahabad and Government of India, Ministry of Defence while rejecting the applicant's disability pension. He submitted that the assessment of attributability or aggravation factor is the sole responsibility of medical authority and not personal presumption of the applicant. He also submitted that appeals made by the applicant to PCDA (P) Allahabad and Government of India, Ministry of Defence were rightly rejected due to policy constraints. Therefore, the plea of the applicant is not sustainable and be dismissed being devoid of merit and lacking substance.

11. We have perused documents and heard arguments of both the Ld. Counsels.

12. In the instant case the applicant retired from service on 31 Dec 2006 in low medical category S1H1A1P2E1. Release Medical Board held at the time of superannuation assessed the composite disability of the applicant @ 40% for life and considered it neither attributable to nor aggravated by service. Based on the opinion of the Release Medical Board, claim for disability pension was rejected. His first and second appeals were also rejected.



13. Relevant portions of the Pension Regulation for the Army 1961 Part I and Disability Pension Entitlement Rule 1982, reads as under :-

(a) **Pension Regulation for the Army 1961 Part I**

*Para 173. "Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.*

*The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*

(b) **Chapter IV – Entitlement Rules**

**Entitlement Rules for Casualty Pensionary Awards, 1982**

*Rule 5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions :-*

***Prior to and during service***

(a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*

(b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

14. In the case of **Dharamvir Singh Vs. Union of India and Ors reported in (2013) 7 Supreme Court Cases 316**, in

paras 29.6, 29.7, 30, 31, 33, 34 and 35 of the judgement, the observations made by Hon'ble The Apex Court are as under :-

*29.6 If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have been arisen during service, the Medical Board is required to state the reasons (Rule 14 (b)); and*

*29.7 It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 -"Entitlement : General Principles", including paragraphs 7,8 and 9 as referred to above (para 27).*

*30. We, accordingly, answers both the questions in affirmative in favour of the appellant and against the respondents.*

*31. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows :*

*"(d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof.*

**YES**

***Disability is not related to mil service"***

33. *In spite of the aforesaid provisions, the pension sanctioning authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rule 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised Seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.*

34. *As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of disability or death resulting from disease is or is not attributable to service. It is immaterial whether the cause giving rise to disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions.*

35. *In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31-7-2009 in Union of India v. Dharamvir Singh and uphold the decision of the learned Single Judge dated 20-5-2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per the order passed by the learned Single Judge. No costs.*

15. In the case of **Sukhvinder Singh Vs. Union of India and Ors reported in 2014 STPL(Web) 468 SC**, in para 9 of the

judgement, the observation made by Hon'ble The Apex Court is as under :-

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined.....”*

16. In the instant case, Release Medical Board held in Aug 2006 has assessed the disability as Gout 10%, Hypertension 30% and NIDDM 20% for life and composite disability as 40% for life. Claim of disability pension of the applicant was rejected since the disability was assessed as neither attributable to nor aggravated by service and not connected with service but the respondents have failed to notice that no note of such disease or disability was made in the service record of the applicant at the time of acceptance for military service. It is also observed that in the Release Medical Board proceeding in Para 12 (Part III, Page 3) and Para 2 (Part V, Page 5), the Medical Board has mentioned as under :-

*“12. Do you consider the disability aggravated by service (give details)? – Yes, stress & strain of service and move of offr to different stations disability gets aggravated.”*

“2. Did the disability exist before entering service? (Y/N/Could be) - a,b,c - No”

Without going through the aforesaid facts the Pension Sanctioning Authority have passed the impugned order. In absence of any evidence on record to show that the applicant was suffering from “**Gout, Primary Hypertension and NIDDM**” at the time of acceptance in service and the fact that the applicant had put in over 29 years of service on the date of retirement, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

17. In view of the above and the law laid down by Hon’ble The Apex Court in the cases of **Dharamvir Singh** (Supra) and **Shukhvinder Singh** (Supra), we are of the considered view that the impugned orders dated 31 March 2009 at Annexure A-1 (i) and 02 Aug 2010 at Annexure A-1 (ii) of O.A. rejecting the disability pension passed by the Respondents were not only unjust, illegal but also not in conformity with rules, regulations and law. The impugned orders dated 31 March 2009 and 02 Aug 2010 pertaining to rejection of disability pension deserves to be set aside and the applicant is entitled to disability pension @ 40% from the date of retirement as recommended by the Release Medical Board.

18. Thus in the result, the Original Application succeeds and is allowed. The impugned orders dated 31 March 2009 at Annexure A-1 (i) and dated 02 Aug 2010 at Annexure A-1 (ii) of

O.A. rejecting the disability pension passed by the Respondents are set aside. The applicant is entitled for disability pension @ 40% for life from the date of retirement. The Respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 8% per annum till the date of payment. The Respondents are further directed to comply the order within three months from the date of production of a certified copy of this order.

19. No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**

**(Justice Virendra Kumar DIXIT)**  
**Judicial Member**

**Date : .02. 2015**

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